

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Tom Horsley,

Complainant,

vs.

Pacific Bell Telephone Company,

Defendant.

(ECP)
Case 04-06-009
(Filed June 2, 2004)

OPINION DENYING RELIEF

Summary

By this decision, we deny the complaint of Tom Horsley (Horsley) requesting that Pacific Bell Telephone Company dba SBC California (SBC California) be required to change its method of calculating credits for surcharges and taxes on refunds to customers. The complaint is time-barred (and so should be dismissed strictly on procedural grounds). In addition, the complaint fails to establish that SBC California violated any statute, rule or order. This proceeding is closed.

Procedural Summary

The complaint was filed on June 2, 2004. SBC California filed its Answer to the Complaint and a Motion to Dismiss on July 6, 2004. Horsley replied on July 23, 2004. There being no need for an evidentiary hearing, this matter was submitted for decision pursuant to a ruling issued by the assigned Administrative Law Judge on July 27, 2004.

The Motion to Dismiss

SBC California filed a Motion to Dismiss on the grounds that the complaint is procedurally time barred and fails to state a claim upon which relief can be granted. According to SBC California, Horsley's concerns relate back to his July 6, 1996 call to the Pacific Bell business office when he first questioned his credits. SBC California notes that under Pub. Util. Code § 736, he had until July 6, 1999 or three years from the date his claim accrued to file a complaint with the Commission. He received an additional six months (or until January 16, 2000) to file his complaint with the Commission when Pacific Bell Manager W. Lugos sent him a letter stating that his inquiry was "now considered closed." Accordingly, SBC California argues that Horsley is more than four years late in filing his claim with the Commission; therefore, the Complaint is time barred and should be dismissed.

Horsley offers no explanation for his complaint being late. Therefore, we grant the motion to dismiss on procedural grounds alone. Nevertheless, we will address the complaint on its merits.

Positions of the Parties

SBC California provided Horsley with credits of 8¢ and 12¢ for two telephone calls made in May 1996. He claims SBC California did not give him credit for surcharges and taxes on these calls.

For purposes of making the refunds, there are four different surcharges and three taxes which SBC California calculates individually and "rounds" to the nearest penny. The calculated amounts are each less than 0.0005; therefore, each rounds to zero. Accordingly, SBC California concludes that no additional credits are due Horsley.

Horsley argues that SBC California should add the calculated amounts together before rounding. His method provides additional credits of 1¢ for surcharges and taxes respectively, for a total of 2¢.

Horsley also disputes SBC California's calculation of a 15% discount on the two calls at issue.

Discussion

We reject Horsley's rounding argument since it does not make accounting sense. SBC California is required to keep separate accounts for the four surcharges and three taxes. Adding refund amounts together before rounding will require SBC California to allocate portions of the rounded refund amount back to each individual account for accounting purposes. This could involve an additional rounding to further distort these accounts. Therefore, we conclude that Horsley's proposal is not workable and will cause accounting problems. Furthermore, SBC California is following standard accounting procedure for rounding, and is not in violation of its Tariff Rules.

Horsley also questions the 12¢ and 8¢ amounts used by SBC California to calculate the refunds. Horsley contends that SBC California has not correctly calculated the 15% discount applicable to all directly dialed local toll and calling card phone calls. As SBC California points out, the 15% discount applies to the balance after \$5.00 in such charges has accrued, as set forth in Tariff Schedule Cal. P.U.C. No. A6.4.1 *et seq.*, Pacific Bell Direct Discount (which has since been cancelled). Since Horsley received the discount on what was a 14¢ local toll call, the surcharge and tax credits should be calculated on the discounted amount of 12¢, and not on 14¢ as Horsley claims. Also, there is no discount on the 8¢ call because the discount does not apply since it was a Zone 3 call, which is not a local toll call. Therefore, we conclude that Horsley is not entitled to any adjustment because SBC California properly used 12¢ and 8¢ as the basis for calculating surcharge and tax refunds.

In summary, Horsley has failed to show that SBC California is in violation of its Tariff Rules, or stated a cause of action for which relief may be granted. We dismiss the complaint with prejudice.¹

O R D E R

Therefore, **IT IS ORDERED THAT:**

1. The motion to dismiss the complaint of Tom Horsley is granted, and the complaint is dismissed with prejudice.

2. This proceeding is closed.

This order is effective today.

Dated _____, at San Francisco, California.

¹ See Decision (D.) 96-06-017, D.96-10-010 and D.97-12-051 related to Horsley's prior complaints on similar issues concerning Pacific Bell Telephone Company.